

STATE OF CALIFORNIA
STATE WATER RIGHTS BOARD

In the Matter of Application 19657)
of American Utilities, Inc., to)
Appropriate from Bear Creek in)
Santa Cruz County)

Decision D 1035

ADOPTED AUG 17 '61

DECISION APPROVING APPLICATION

Bear Creek Estates, Inc., having filed Application 19657 for a permit to appropriate unappropriated water and having subsequently assigned the same to American Utilities, Inc.; protests having been received; a public hearing having been held after due notice to the applicant and protestants; the applicant and protestants having appeared; evidence having been received, and the Board, having considered the same and now being fully advised in the premises, finds as follows:

1. Application 19657 is for a permit to appropriate 0.22 cubic foot per second (cfs) by direct diversion from January 1 to December 31 of each year from Bear Creek in Santa Cruz County for domestic use. The point of diversion is to be located within the NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 21, T9S, R2W, MDB&M.

2. The place of use consists of approximately 400 acres which is being subdivided into approximately one-acre plots to be sold to the public for all-year homesites.

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Development of the subdivision has begun, and a filtration plant and pumping station have been installed to divert water from Bear Creek to serve domestic water to the homesites. According to applicant's Exhibit 3, the estimated maximum safe capacity of the filtration plant is 150 gallons per minute or about 0.33 cubic foot per second. It has been estimated that by 1963 there will be 250 active connections with an average daily use of 0.1 cfs and a maximum daily use of 0.23 cfs; by 1965, an estimated 500 active connections will require, on an average daily basis, 0.22 cfs and a maximum daily use of 0.35 cfs. Peak demands in excess of 150 gpm, the capacity of the intake structure and filtration plant, are expected to be met from regulatory storage (RT 34). The applicant intends to divert under claim of riparian right whenever diversion of water is not authorized by the permit issued pursuant to Application 19657.

3. The flow of Bear Creek is typical for a low-elevation stream, depending largely upon precipitation as a source of supply. Following the winter and spring runoff, the flow decreases sharply. Measurements made near applicant's point of diversion show that minimum flows during the critical dry season from about August 1 to October 30 have varied from zero in an extremely dry year (1939) to 1.62 cfs in a wet year (1941). On June 12, 1961, the flow was 0.88 cfs.

4. The City of Santa Cruz, a protestant, diverts water from the San Lorenzo River to which Bear Creek is tributary. The City holds License 1553 (Application 4017) confirming the right to appropriate 6.2 cfs year-round and Permit 2738 (Application 5215) allowing an additional diversion of 25 cfs. The maximum total monthly diversion from San Lorenzo River by the City during the period from 1950 to 1959, inclusive, was 246,610,000 gallons pumped during August 1957. This is equivalent to an average during the month of about 12.3 cfs. Under present requirements, diversions by the City of Santa Cruz would have been limited by insufficient water during three years out of the 23 years during which flows have been recorded of the San Lorenzo River at Big Trees. These shortages would have occurred during the months of July, August, and September of 1939 and August and September of 1947 and 1960.

5. Bear Creek provides a small spawning area for steelhead trout and a fishing stream for rainbow trout, the latter species being present when planted. Public access to the stream is very limited however and its value as a fishing stream is questionable. The minimum flow needed to meet the protest by the Department of Fish and Game would require the applicant to bypass 2.0 cfs or the natural flow of the stream from December 1 of each year to June 30 of the succeeding year and 0.5 cfs or the natural flow of the stream during the remainder of the year to maintain fish life. However, the historical flow of Bear Creek during the years 1939, 1947, and 1948 indicates that

the natural flow during critical summer months has been only a fraction of the amount requested by the Department of Fish and Game. The minimum flow requirements requested by the Department of Fish and Game would be desirable and appear to be reasonable from the standpoint of maintaining fish life; however, it is apparent that if these flows are bypassed, water would not be available to serve the applicant's subdivision during critical periods of dry years.

6. The water users who are to be supplied by applicant will require a dependable supply all year, and, in order to best develop, conserve, and utilize in the public interest the water sought to be appropriated, it is necessary that a supplemental source of water be provided for those times when there is not sufficient unappropriated water available from the natural flow of Bear Creek. The applicant indicated that regulatory storage and possibly carry-over storage would be provided to firm up the water supply under ultimate development of its project (RT 34, 35). However, the record is devoid of any definite time schedule for construction of such facilities or any definite plans to obtain supplemental water, in the event the flow in Bear Creek becomes insufficient, to supply the needs of the applicant during the initial development of the project.

7. There is unappropriated water available to supply the applicant, and, subject to suitable conditions, such water may be diverted and used in the manner proposed without causing substantial injury to any lawful user of water.

8. The intended use is beneficial.

From the foregoing findings, the Board concludes that Application 19657 should be approved and that a permit should be issued to the applicant subject to the limitations and conditions set forth in the following Order.

IT IS HEREBY ORDERED that Application 19657 be, and the same is, approved, and that a permit be issued to the applicant subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 0.22 cubic foot per second by direct diversion to be diverted year-round.

2. The maximum amount herein stated may be reduced in the license if investigation warrants.

3. Construction work shall be completed on or before December 1, 1964.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. All rights and privileges under this permit, including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the

State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

7. Diversions shall not be made under this permit until permittee has shown evidence satisfactory to the State Water Rights Board that permittee can and will acquire a supplemental source of water to supply permittee's needs when the flow of Bear Creek is insufficient to meet the requirements of holders of prior downstream rights.

8. The State Water Rights Board retains jurisdiction to determine releases to be required for preservation of fish until a showing has been made by applicant of the nature and availability of a supplemental source of water.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on the day of , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member